



# GMS Flash Alert

## Immigration Edition

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# United States - Temporary Protected Status for Ukraine, Sudan; Their Students Can Work

On April 18, 2022, the United States Department of Homeland Security (DHS), announced<sup>1</sup> its registration process for Temporary Protected Status (TPS) for Ukrainian<sup>2</sup> and Sudanese<sup>3</sup> nationals. Starting on April 19, 2022 through October 19, 2023, individuals from both countries (and those with no nationality who last habitually resided in Ukraine or Sudan) who meet the requirements promulgated by the DHS may file an application with the United States Citizenship and Immigration Services (USCIS) seeking TPS.

In addition, on April 19, 2022, DHS announced it is relaxing certain employment authorization rules for F-1 students with Ukrainian<sup>4</sup> and Sudanese<sup>5</sup> nationality (and those with no nationality who last habitually resided in Ukraine or Sudan) who are experiencing severe economic hardship as a direct result of the current crisis in their respective countries.

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## WHY THIS MATTERS

Eligible Ukrainian nationals who have been in the U.S. continuously since April 11, 2022, and eligible Sudanese nationals who have been residing in the United States continuously since March 1, 2022, will be able to apply for TPS until October 2023. Those who are eligible will also be able to apply for employment and travel authorization.

The TPS designations for Ukraine and Sudan will allow eligible individuals to work in the U.S. during the relevant designation period without requiring a visa sponsorship from a U.S. employer.<sup>6</sup> According to the *Federal Register*, DHS estimates that approximately 59,600 Ukrainian nationals may be eligible for TPS designation and about 3,090 Sudanese individuals may be eligible for TPS designation.

In addition to the TPS designations, DHS is suspending certain employment authorization rules for Ukrainian and

Sudanese nationals in F-1 nonimmigrant student status who were present in the United States on April 19, 2022, and who seek off-campus employment authorization due to severe economic hardship resulting from the crisis in their respective countries.

Eligible Ukrainian and Sudanese F-1 students will be able to request an employment authorization document, work an increased number of hours when the academic institution is in session, and reduce their course load all the while continuing to maintain F-1 nonimmigrant status. DHS is relaxing employment authorization rules until October 19, 2023. According to the *Federal Register*, the government estimates that approximately 2,604 F-1 nonimmigrant students from Ukraine and approximately 324 F-1 nonimmigrant students from Sudan present in the United States may benefit from the relaxed rules.

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## Background

### TPS

When conditions in a country temporarily prevent its nationals from returning safely, or in certain circumstances where the country is unable to handle the return of its nationals adequately, DHS may designate such foreign country for TPS. A country may be designated for TPS if the DHS Secretary determines that current country conditions fall into one or more of the three statutory bases for designation: 1) ongoing armed conflict, 2) environmental disasters, or 3) extraordinary and temporary conditions.<sup>7</sup> Under this program, USCIS may grant TPS, along with permission to work and travel authorization, to eligible nationals of TPS-designated countries who are already in the United States.

### Ukraine

Ukraine had never previously been granted TPS designation. The Secretary of Homeland Security, Alejandro Mayorkas, in consultation with the Department of State (DOS), determined that the ongoing armed conflict in Ukraine poses a serious risk to the health and safety of its nationals should they be required to return to Ukraine. Based on this determination, DHS concluded that an 18-month designation period is appropriate to safeguard citizens of Ukraine while the extraordinary and temporary conditions facing the country remain.

### Sudan

Sudan first received TPS designation on November 4, 1997, due to the ongoing armed conflict and the extraordinary conditions preventing nationals from returning to their country safely. Former DHS Secretary, Elaine Duke, provided notice of termination for Sudan's TPS designation effective November 2, 2018. (For related coverage, see [GMS Flash Alert 2020-493](#), December 11, 2020.) Through a lawsuit, *Ramos v. Wolf*, an injunction was put in place prohibiting DHS from terminating TPS pending ongoing litigation.<sup>8</sup>

Approximately 700 beneficiaries are currently receiving TPS benefits under Sudan's previous TPS designation.<sup>9</sup> Additionally, in October 2021, the military forces in Sudan declared a state of emergency that escalated ongoing tensions across the country. For this reason, current DHS secretary Mayorkas determined that Sudan should benefit from an 18-month TPS designation.

### F-1 Student Employment

F-1 students are not typically authorized to work off-campus during the first academic year. After the first academic year, F-1 students may engage in certain types of off-campus employment related only to their area of study if such employment is authorized in advance by the Designated School Official (DSO) and USCIS. Work is typically limited to a maximum of 20 hours per week while school is in session.<sup>8</sup>

# Eligibility

## TPS Eligibility for Ukrainian Nationals

DHS granted TPS designation of Ukraine for 18 months from April 19, 2022 through October 19, 2023. Applicants must submit an initial application (Form I-821, *Application for Temporary Protected Status*) during the initial registration period from April 19, 2022 through October 19, 2023. In addition to demonstrating continuous residence in the United States since April 11, 2022, and meeting other eligibility criteria, first-time applicants for TPS under the Ukraine designation must demonstrate continued physical presence in the United States since April 19, 2022, the effective date of the designation of Ukraine.

New applicants may also apply for employment (Form I-765) and travel authorization (Form I-131) during the registration period by submitting the corresponding forms and fee, or fee waiver requests.

## TPS Eligibility for Sudanese Nationals

DHS granted TPS designation of Sudan for 18 months from April 19, 2022 through October 19, 2023. Sudanese nationals must demonstrate continuous residence in the United States since March 1, 2022 and continued physical presence in the United States since April 19, 2022, the effective date of the new designation period for Sudan.

All Sudanese individuals who qualify for TPS, including current TPS holders, must submit form I-821, *Application for Temporary Protected Status*, to qualify under the new designation. Both current and new TPS seekers should file their forms as new applicants. USCIS will not interpret checking the “new applicant” box as a misrepresentation for current TPS applicants who hold TPS under a previous designation. Like Ukrainian nationals, Sudanese nationals can also request employment authorization by filing Form I-765 and travel authorization by filing Form I-131.

Note: all individuals applying for TPS must undergo security and background checks as part of determining eligibility. Biometrics (i.e., fingerprints) collection is generally required for applicants ages 14 and older.

## Ukrainian and Sudanese F-1 Student Employment

Any Ukrainian or Sudanese national who meets the following criteria is eligible for student employment pursuant to the notices published by DHS on April 19, 2022:

- Lawfully present in the U.S. in F-1 status as of April 19, 2022;
- Currently maintaining F-1 status;
- Experiencing severe economic hardship as a direct result of the current crisis in country of nationality: either Ukraine or Sudan; and,
- Enrolled in a school that is certified by the DHS’s Student and Exchange Visitor Program.<sup>11</sup>

If the above criteria are met, a Form I-765, *Application for Employment Authorization*, must be submitted to USCIS. Students are also encouraged to connect with their DSO to determine eligibility.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

## FOOTNOTES:

- 1 Department of Homeland Security, "[DHS Announces Registration Process for Temporary Protected Status for Ukraine and Sudan](#)" (April 18, 2022).
- 2 *The Federal Register*, "[Designation of Ukraine for Temporary Protected Status](#)" (April 19, 2022).
- 3 *The Federal Register*, "[Designation of Sudan for Temporary Protected Status](#)" (April 19, 2022).
- 4 *The Federal Register*, "[Employment Authorization for Ukrainian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Ongoing Armed Conflict in Ukraine](#)" (April 19, 2022).
- 5 *The Federal Register*, "[Employment Authorization for Sudanese F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Sudan](#)" (April 19, 2022).
- 6 *Ibid.*
- 7 8 U.S. Code § 1254a - Temporary protected status (on Cornell Law School's Legal Information Institute [website](#)). (Note that this is a 3<sup>rd</sup> party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)
- 8 See *Ramos, et al. v. Nielsen, et al.*, 336 F.Supp.3d, 1075 (ND Cal. Oct. 3, 2018), *vacated on appeal*, *Ramos v. Wolf*, 975 F.3d 872(9th Cir. Sept. 14, 2020); *petition for en banc rehearing* filed Nov. 30, 2021(No. 18-16981).
- 9 *The Federal Register*, "[Designation of Sudan for Temporary Protected Status](#)" (April 19, 2022).
- 10 See USCIS' "[Students and Employment](#)" webpage.
- 11 See *supra* notes 4-5.

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## Contact us

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